

July 10, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0700998**

ALAN LIND
Code Enforcement Appeal

Location: 5005–328th Avenue Southeast

Appellant: **Alan Lind**
P.O. Box 344
Fall City, Washington 98024

King County: Department of Development and Environmental Services (DDes)
represented by Jeri Breazeal
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7264
Facsimile: (206) 296-6644

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal; remove mobile home and additions within 60 days or submit an application for use of the improvements that is currently allowed by applicable codes
Examiner's Decision:	Grant the appeal, in part, and deny, in part; allow 90 days to apply for demolition permit(s) or all required building and occupancy permits for authorized uses

ISSUES AND TOPICS ADDRESSED:

Legal nonconforming use; waiver of penalty; accessory dwelling unit

SUMMARY OF DECISION:

The property owner's appeal of a notice of King County Code violation is granted, in part, and denied, in part.

EXAMINER PROCEEDINGS:

Hearing opened:	May 7, 2009
Hearing continued for administrative purposes:	May 7, 2009
Hearing record closed:	June 16, 2009

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On February 11, 2009, the King County Department of Development and Environmental Services (DDES) issued a notice of King County Code violation, civil penalty order, abatement order, notice of lien, duty to notify ("Notice and Order") to Alan Lind. This Notice and Order was a supplemental Notice and Order which deleted a tenant, Jim Chisholm, from a previously issued Notice and Order. The property subject to the Notice and Order is located at 5005 328th Avenue SE in unincorporated King County. Alan Lind is the owner of the subject property.

The Notice and Order alleged violations of the King County Code for the placement of, and construction of additions to, a mobile home, and installation of a wood stove in the addition, without required permits. The mobile home is also alleged to be an unauthorized second dwelling unit ("ADU"), which does not meet requirements for an ADU.

2. A timely appeal of the Notice and Order was filed by Alan Lind on March 24, 2009. The Statement of Appeal asserts that the structures and uses on the site are legal permitted uses, that were established prior to 1970 and/or 1958, resulting in their having status as legal non-conforming uses.
3. The appellant purchased the property with the current uses already established. The property was represented to the Appellant as having a legal second dwelling unit.

KCC 23.36.030.b provides, "if an owner of property where a violation has occurred...(demonstrates) that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, such property owner shall be responsible only for abatement of the violation..."

The DDES code enforcement Officer agrees that the mobile home in issue was already in place when the appellant purchased the subject property.

4. The property is zoned RA-2.5. An ADU is permitted within this zone only on the condition, among others, that the property owner reside on the property. Mr. Lind does not reside on this property.

5. The appellant testified that he grew up in this area, and recalls the mobile home having been on the property during his childhood. King County began requiring mobile home permits in 1972. The appellant was seven years old in 1972.

The aerial photographs presented show this property as it existed in July 1976, July 1985 and August 1990. The mobile home in issue is clearly shown to exist on the property on August 12, 1990. However, on July 25, 1976, the area where the mobile home currently exists was then uncleared forest and the mobile home was not on the property. On July 3, 1985 that area was cleared, and may possibly have been occupied by the mobile home. The preponderance of the evidence demonstrates that the mobile home was not located on the subject property in 1972.

6. Subsequent to 1976, an addition was made to the mobile home by enclosing the open porch and installing a wood stove in that area, creating additional living space. No permits were applied for or issued to authorize the additional living space or installation of the wood stove.

CONCLUSIONS:

1. The property owner has demonstrated that the code violations that are the subject of this Notice and Order were caused by another person who was not the agent of the property owner, and who acted without the property owner's knowledge or consent. Therefore the current property owner is responsible only for abatement of the violations, and no civil penalty should be assessed against the appellant.
2. The mobile home on the subject property is not a legal non-conforming use.
3. A second dwelling unit on the subject property is not a legal use. The current use of the mobile home as an ADU is inconsistent with the requirement of the King County Code that an ADU in the R-2.5 zone may be permitted only when the property owner resides upon the subject property.
4. A reasonable period of time to allow the property owner to apply for a demolition permit is 90 days. A reasonable time to complete the demolition and to remove the mobile home, with all demolition debris, is 60 days from issuance of the permit.
5. Alternative uses of the mobile home structure as a permitted accessory use, or as an ADU if the owner elects to live on the property, may be possible, subject to issuance of required building and occupancy permits.

DECISION:

The appeal of Alan Lind is denied in part and granted in part, as follows:

The appeal of the civil penalty assessed in the Notice and Order is GRANTED. The appeal of the notice of violation, abatement order and duty to notify, for the placement of and additions to a mobile home and the installation of a wood stove without required permits and approvals, and for the occupancy of a second dwelling unit on the parcel, is DENIED.

The appellant is granted 90 days from the date of this decision to:

1. Apply for a demolition permit for the mobile home and additions to the mobile home on the subject property, and complete the demolition and removal of the mobile home and demolition debris within 60 days from the issuance of that permit.
2. In the alternative, the appellant is granted 90 days to apply for all necessary building, use and occupancy permits for authorized uses of the mobile home structure within the RA-2.5 zone classification. Should residential use of the mobile home be sought by the applicant, he is required to demonstrate within the same 90-day period that the applicant resides on the subject property, or will reside thereon upon completion of permitting.

The foregoing time periods may be extended by DDES in its sole discretion for good cause.

If the Appellant fails to obtain a demolition permit, or complete the demolition and removal of the mobile home and demolition debris within the allowed time periods, or apply for and obtain the required permits to retain the structures and wood stove on the subject property for an authorized use, or to provide all required information to enable DDES to act on such permit applications, King County may abate the violations pursuant to King County Code Chapter 23.

ORDERED this 10th day of July, 2009.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the county regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MAY 7, 2009, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0700998

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal representing the Department and Alan Lind the Appellant. At the conclusion of the hearing, the Examiner declared that the hearing would be continued for administrative purposes to enable the parties to submit additional evidence concerning the age and date of installation of the mobile home on the property. Additional evidence was submitted by DDES on June 2, 2009. No additional evidence was submitted by the Appellant. On June 16, 2009, the Examiner declared the hearing record to be closed.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | DDES staff report to the Hearing Examiner for E0700998 |
| Exhibit No. 2 | Copy of the Notice and Order issued February 11, 2009 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received March 3, 2009 |
| Exhibit No. 4 | Copies of codes cited in the Notice and Order |
| Exhibit No. 5 | Photographs of site |
| Exhibit No. 6a-d | Copies of historical permits |
| Exhibit No. 7 | Copies of Assessor information |
| Exhibit No. 8 | 8/12/1990 aerial photograph of property showing mobile home approximately 300 feet from front property line |
| Exhibit No. 9 | Copy of State of Idaho plaque off of mobile home |

The following exhibits were offered and entered into the record on June 2, 2009:

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| Exhibit No. 10 | Letter from DDES Officer Jeri Breazeal to King County Hearing Examiner, dated May 29, 2009 |
| Exhibit No. 11 | Copy of US Housing and Urban Development (HUD) Standards Section 3280.5 |
| Exhibit No. 12 | 7/25/1976 aerial photograph showing uncleared land in area shown as occupied by mobile home in exhibit no. 8 |
| Exhibit No. 13 | 7/3/1985 aerial photograph showing cleared land (possibly occupied by mobile home) in area shown as occupied by mobile home in exhibit no. 8 |

JNOC:vsm
E0700998 RPT